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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009-82

13 KIMBERLY ANN WRIGHT
7565 Charmant Drive, Unit 305
14 San Diego, CA 92122

A C C U S A T I O N

15 Registered Nurse License No. 658886

16 Respondent.

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18 Complainant alleges:

19 PARTIES

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about June 13, 2005, the Board of Registered Nursing issued
24 Registered Nurse License Number 658886 to Kimberly Ann Wright (Respondent). The
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on August 31, 2010, unless renewed.

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4. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

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6. Section 493 of the Code states:

As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”

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1 8. Section 2761 of the Code states:

2 The board may take disciplinary action against a certified or licensed
3 nurse or deny an application for a certificate or license for any of the following:

4 (a) Unprofessional conduct, which includes, but is not limited to, the
5 following:

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7 (f) Conviction of a felony or of any offense substantially related to the
8 qualifications, functions, and duties of a registered nurse, in which event the
9 record of the conviction shall be conclusive evidence thereof.

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11 9. Section 2762 of the Code states:

12 In addition to other acts constituting unprofessional conduct within the
13 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
14 for a person licensed under this chapter to do any of the following:

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16 (b) Use any controlled substance as defined in Division 10 (commencing
17 with Section 11000) of the Health and Safety Code, or any dangerous drug or
18 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
19 or in a manner dangerous or injurious to himself or herself, any other person, or
20 the public or to the extent that such use impairs his or her ability to conduct with
21 safety to the public the practice authorized by his or her license.

22 (c) Be convicted of a criminal offense involving the prescription,
23 consumption, or self-administration of any of the substances described in
24 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
25 record pertaining to, the substances described in subdivision (a) of this section, in
26 which event the record of the conviction is conclusive evidence thereof.

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28 10. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant
to Division 1.5 (commencing with Section 475) of the Business and Professions
Code, a crime or act shall be considered to be substantially related to the
qualifications, functions or duties of a licensed vocational nurse if to a substantial
degree it evidences present or potential unfitness of a licensed vocational nurse to
perform the functions authorized by his license in a manner consistent with the
public health, safety, or welfare. Such crimes or acts shall include but not be
limited to those involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of
Chapter 5 of Division 2 of the Business and Professions Code.

1 (c) Violating or attempting to violate, directly or indirectly, or assisting in
2 or abetting the violation of, or conspiring to violate any provision or term of
Chapter 6.5, Division 2 of the Business and Professions Code.

3 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
4 whether a licensed physician or not, in the performance of or arranging for a
violation of any of the provisions of Article 13, Chapter 5, Division 2 of the
5 Business and Professions Code.

6 (e) Conviction of a crime involving fiscal dishonesty.

7 (f) Any crime or act involving the sale, gift, administration, or furnishing
8 of "narcotics or dangerous drugs or dangerous devices" as defined in Section
4022 of the Business and Professions Code.

9 11. California Code of Regulations, Title 16, section 2522.5 states:

10 (a) When considering the suspension or revocation of a license on the
11 ground that a licensed vocational nurse has been convicted of a crime, the Board,
in evaluating the rehabilitation of such person and his eligibility for a license will
12 consider the following criteria:

- 13 (1) Nature and severity of the act(s) or offense(s).
- 14 (2) Total criminal record.
- 15 (3) The time that has elapsed since commission of the act(s) or
16 offense(s).
- 17 (4) Whether the licensee has complied with any terms
of parole, probation, restitution, or any other
18 sanctions lawfully imposed against the licensee.
- 19 (5) If applicable, evidence of expungement proceedings
20 pursuant to Section 1203.4 of the Penal Code.
- 21 (6) Evidence, if any, of rehabilitation submitted by the
licensee.

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23 12. Section 125.3 of the Code provides, in pertinent part, that the Board may
24 request the administrative law judge to direct a licentiate found to have committed a violation or
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
and enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(May 5, 2006 Criminal Conviction for DUI on December 18, 2005)**

3 13. Respondent has subjected her license to disciplinary action under sections
4 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
5 substantially related to the qualifications, functions, and duties of a registered nurse. The
6 circumstances are as follows:

7 a. On or about May 5, 2006, in a criminal proceeding entitled *People*
8 *of the State of California v. Kimberly Ann Wright*, in Kern County Superior Court, case number
9 BM684691A, Respondent was convicted on her plea of nolo contendere, and was found guilty
10 by the court of violating Vehicle Code section 23152, subdivision (a), driving under the
11 influence of alcohol, a misdemeanor.

12 b. As a result of the conviction, on or about May 5, 2006,
13 Respondent's driver's license was revoked, and she was sentenced to two days in the county jail
14 (with credit for two days served), payment of fees and fines in the amount of \$1,690, and
15 completion of a licensed alcohol education program.

16 c. The facts that led to the conviction were that on or about the early
17 morning of December 18, 2005, a California Highway Patrol officer observed Respondent
18 driving in an unsafe manner. Respondent made a U-turn on a red light, and weaved from lane to
19 lane. Upon stopping in the number two lane, the CHP officer signaled to Respondent to pull her
20 car to the curb. The officer approached Respondent's vehicle; he detected a strong odor of
21 alcoholic beverage emitting from the vehicle. The officer had Respondent exit her vehicle. She
22 staggered from left to right and had an unsteady gait. The officer noted Respondent's objective
23 symptoms of alcohol intoxication: slurred speech, red, watery eyes, and a strong odor of alcohol
24 on her breath. Respondent told the officer she had consumed one glass of wine. Respondent
25 was not able to satisfactorily perform any of the field sobriety tests. Respondent was arrested for
26 driving under the influence. She refused to submit to a test of her blood or urine.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(January 18, 2008 Criminal Conviction for an Alcohol-Involved Incident on April 1, 2007)**

3 14. Respondent has subjected her license to disciplinary action under sections
4 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
5 substantially related to the qualifications, functions, and duties of a registered nurse. The
6 circumstances are as follows:

7 a. On or about January 18, 2008, in a criminal proceeding entitled
8 *People of the State of California v. Kimberly Ann Wright*, in Kern County Superior Court, case
9 number BM709244, Respondent was convicted on her plea of nolo contendere, and was found
10 guilty by the court of violating Vehicle Code section 23103.5, subdivision (a). Said charge was
11 entered as a negotiated substitution of the charge of violating Vehicle Code section 23152,
12 driving under the influence of alcohol.

13 b. As a result of the conviction, on or about January 18, 2008,
14 Respondent's driver's license remained revoked, and she was sentenced to three years probation,
15 and payment of \$995 in fees and fines. Respondent was further ordered to abstain from the use
16 of alcohol, to stay away from places where alcohol is sold as a primary business, to submit to
17 any request for blood, breath, or urine testing at the request of any peace officer or probation
18 officer, and completion of a licensed alcohol education program.

19 c. The facts that led to the conviction were that on or about the early
20 morning of April 1, 2007, the Bakersfield Police Department responded to a possible DUI.
21 Upon arrival at the scene, they were met by an off-duty sheriff's deputy. The deputy told the
22 officers that he was in his vehicle behind Respondent's vehicle at a red stoplight. When the light
23 turned green, Respondent's vehicle proceeded approximately 15 feet into the intersection and
24 stopped. The deputy waited 30-45 seconds and then exited his vehicle to check on Respondent.
25 The deputy asked Respondent if she had anything to drink that night. Respondent stated that she
26 drank some wine. The deputy had Respondent pull over to the side of road while he waited for
27 the police department to arrive. The police officers contacted Respondent while she was still in
28 her vehicle. They noted a strong odor of alcohol emitting from the interior of the vehicle. An

1 officer asked Respondent if she knew where she was; she responded "White Lane." The officer
2 noted Respondent's eyes were red and watery and she appeared very drowsy. The officers had
3 Respondent exit her vehicle and stand on the sidewalk. Respondent submitted to field sobriety
4 tests, which showed heavy impairment. Respondent also agreed to submit to a preliminary
5 alcohol screening (PAS) test. The result of the PAS test was a BAC of .105. Respondent gave a
6 blood sample to be tested. A records check revealed that Respondent was driving on a license
7 suspended from a prior DUI, as detailed in paragraph 13, above.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

10 15. Respondent has subjected her license to disciplinary action under sections
11 2761, subdivision (a), and 2862, subdivision (b) of the Code in that on December 18, 2005 and
12 April 1, 2007, as detailed in paragraphs 13 and 14, above, Respondent used alcoholic beverages
13 to an extent or in a manner dangerous or injurious to herself and the public, which constitutes
14 unprofessional conduct.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)**

17 16. Respondent has subjected her license to disciplinary action under sections
18 2761, subdivision (a), and 2862, subdivision (c) of the Code in that on or about May 5, 2006 and
19 January 18, 2008, as detailed in paragraphs 13 and 14, above Respondent was convicted of
20 criminal offenses involving the consumption and/or self-administration of alcohol, which
21 constitutes unprofessional conduct.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 658886, issued to Kimberly Ann Wright;
2. Ordering Kimberly Ann Wright to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/6/08


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2008802478